

No. 23-15992

**United States Court of Appeals
for the Ninth Circuit**

FEDERAL TRADE COMMISSION,

Plaintiff-Appellant,

v.

MICROSOFT CORP. AND ACTIVISION BLIZZARD, INC.,

Defendants-Appellees.

Appeal from an Order of the
U.S. District Court for the Northern District of California
No. 3:23-cv-02880-JSC, Hon. Jacqueline Scott Corley

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Case No. 23-cv-02880-JSC

**ORDER DENYING PLAINTIFF'S
MOTION FOR INJUNCTION
PENDING APPEAL**

The FTC asks this Court to enjoin the merger at issue pending resolution of the FTC's appeal to the Ninth Circuit Court of Appeals. (Dkt. No. 313.) The motion is DENIED. *See* Dkt. No. 305 at 51-52.

IT IS SO ORDERED.

Dated: July 13, 2023


JACQUELINE SCOTT CORLEY
United States District Judge

From: Ryan, Jim [REDACTED]
To: GDM Leadership
Sent: 2/23/2022 12:06:58 AM
Subject: FW: Jim Ryan and Fidelity Meeting
Attachments: 2022.2.22 Jim Ryan x Fidelity Meeting.docx

Notes on the investor meeting held yesterday.

This was especially interesting (and in fact especially difficult) given the vastly divergent levels of industry knowledge in those attending.

[REDACTED]

Jim

From: Miura, Makiko <[REDACTED]>
Sent: 22 February 2022 20:32
To: Yoshida, Kenichiro (SGC) <[REDACTED]>; Totoki, Hiroki (SGC) <[REDACTED]>; Ryan, Jim <[REDACTED]>; Matsuoka, Naomi (SGC) <[REDACTED]>; Saito, Yoshinori (SGC) <[REDACTED]>; Clark, Jennifer <[REDACTED]>; Auby, Karen <[REDACTED]>; Tao, Lin (SIE) <[REDACTED]>; Hayakawa, Sadahiko (SGC) <[REDACTED]>; Kondo, Teruya (SGC) <[REDACTED]>
Cc: GH/mailling-list/ir <[REDACTED]>; Hill, Justin <[REDACTED]>; Koizumi, Mai <[REDACTED]>
Subject: Jim Ryan and Fidelity Meeting

Dear All,

Today Jim had a meeting with analysts / portfolio managers at Fidelity. Please see the meeting memo attached.

.....
Makiko Miura (三浦真希子) | Head of Investor Relations Europe | Sony Global Treasury Services | +44(0) 7393 467554 | [REDACTED]

Jim Ryan x Fidelity Meeting 2/22

Attendees from Fidelity:

Michael Reznikas	Steve Dufour
Andrew Sergeant	William Danoff
Matthew Drukker	Cameron Maddox
Jed Weiss	John Dance
Faris Rahman	Mark Schmehl
Alex Zavratsky	Nicole Abernethy
Sonu Kal	Bill Bower
Adam Kramer	

Opening remarks from Jim Ryan

Q: You mentioned that you'll be launching 10 new games, and your goal is to double your first party revenue stream within four years. So, out of these 10 games, how much will come from your existing titles?

A: It's a mixture. I'm not going to go beyond anything that's already been announced, but it would be fair to say that when you look at our IP portfolio and when you think about the biggest names in there, having those games break out from the constraints of the console model is a very significant prospect for us. You can assume that a significant portion of our existing AAA IP will find its way into a live service game. We have partnerships under development with people who we've already worked with and with some new partners, who will bring new IP to PlayStation and there's even one or two things that are completely new that are coming from the ground up. But I think it's the first category that really excites us because those games leverage something that we already know resonates massively with the gaming community. It's an untapped opportunity for us. And if we do it right, the potential upside for SIE will be enormous.

Q: In order to double your first party game revenue, how many of the 10 new games need to be big hits?

A: It would be naive for us to assume that all 10 will be massive successes so that is not a necessary condition for us to double first party revenues. That is certainly not what we're assuming. Clearly, the distinction between a hit and not a hit is not a binary one. And don't forget that as we do this, we will continue to publish the games that have served us so well over the years. These first person, graphically beautiful narrative rich games will continue to be the bedrock of our first party publishing business.

Q: What would be the ideal mix for your first party games going forward? How much will be live games vs traditional first person narrative-driven games?

A: We will continue to make first person games like we always have, and we expect those to have slightly greater sales and profitability, reflecting our confidence in the long-term installed base of PS5, as well as the fact that those games will make their way to PC. So, we think that the pie from those games will grow, but that growth will be incremental in nature. We think the live service games will build on that foundation and take us to another level.

Q: Bungie has 1,000 employees and 20-30 years of history making games. You're counting on a big contribution from them to help you with these 10 games and help you to allocate capital effectively as well as avoid making mistakes. Is that the strategy?

A: Yes, it is. I've been talking a lot over the past couple of years with our publishing partners, many of whom are slightly farther down the road than we are in terms of live service publishing. What they all have in common is that they've made a lot of mistakes on that road. And I think one of the benefits of being a fast follower in this space is that if we're intelligent and thoughtful, we can learn from those mistakes. But these partners can be viewed as our competitors and there's a limit to what they will share. Having a premier live service publisher within the group who is extremely keen to collaborate with Sony massively increases our ability to learn and our ability to avoid the mistakes that others have made.

Q: Sony has a nice royalty business and your first party business was originally designed to differentiate your platform. I believe what you're describing is a bigger push into first party publishing but not on an exclusive basis. Was the decision to pivot the business model in this way based on a view that the royalty business may be less sustainable at some point in the future? Or do you think that first party publishing with live services is incremental or even a better business model than the past model of royalty take rates?

A: We hope that our investment in first party development and first party publishing is going to generate terms that are wholly incremental to the historic way that we run our business. I think the most likely scenario is that will be the case. However, business models in the online space are subject to scrutiny right now. And they're subject to competitive pressures. Therefore, one of the reasons why we are investing massively in first party development and publishing is to provide us with a hedge against pressure on the historic business model. Right now, we don't see that pressure. But that's not to say that pressure might not manifest itself at some point down the road. Having a business model where you own elements from the top to the bottom increases your ability to be self-determinant. And when you get it right, particularly in this live services area, the financial upside is absolutely spectacular.

Q: The operating margins in the gaming segment have been in the low teens. Activision's operating margins are in the 30s. Would you expect the profitability on a margin basis to go up or down?

A: On the margin basis, it would go up if the games are successful.

Q: You've made it very clear that there's going to be more acquisitions to come. What is an ideal acquisition target and what are you hoping it will help you achieve?

A: I think an ideal acquisition target has to help us deliver on our strategies in a way that we're not capable of doing on our own. And when I look at our portfolio of studios and our publishing capabilities, we need help in the areas in which we're not strong at present. We aspire to grow our community, grow engagement with our games, grow the number of people who are playing those games, grow the

amount of time people are spending on those games, move across to PC and mobile, and grow the number of people playing with each other. It's in these spaces, where we don't have expertise and presence, we need to build expertise. These are some of the reasons behind the acquisition of Bungie. We have publicly stated ambitions in the area of mobile. That's part of game development that we've not been present in any meaningful extent. So, you can assume that we have an interest in acquiring development knowledge and management expertise there.

Q: Did you look at Activision as a target? Was it too big to buy?

A: We know Activision extremely well. They are probably one of our principal partners. In terms of deployment of Sony's capital, when you look at 69 billion dollars for Activision compared to 3.6 billion dollars for Bungie, we believe that Bungie can give us way more than a 69 billion acquisition of Activision. And that's before considering the relative value of that particular transaction.

Q: PlayStation is very important to Activision. In the next decade, is Microsoft going to turn off their supply of games to you?

A: I honestly believe that that will not happen. We continue to talk with Activision. I talk with Phil Spencer at Microsoft. We're having good conversations. They obviously have significant regulatory hurdles that they must navigate to get this transaction cleared. And ongoing availability of Activision games on competitive platforms is going to be central for them to be successful in that mission.

Q: Is there an angle where Microsoft could do a windowing strategy where their content comes to Xbox first?

A: Clearly those options are open to Microsoft. They have paid a huge amount of money for this acquisition. But as I answered in the previous question, we feel extremely confident that *Call of Duty* and other Activision games will continue to be published on our platform. Actually these days, we see ourselves in a lot more partnerships like the one we have with Microsoft.

Q: Given the rapid change in competition in gaming, are there some potential M&A opportunities that are larger in size that you would consider? There are some unique software assets not focused on gaming such as Unity, Roblox and Epic for example. Are those targets you might consider going forward?

A: I go back to the comment that I made earlier that a necessary condition for us to consider when making any acquisition is whether it helps us advance our basic strategy of growing our first party publishing business across multiple formats in a way that we have not in the past. And if a potential acquisition ticks those boxes, it goes on the list.

Q: You as well as Sony's senior management have made it clear that you expect strong operating income growth in the PS5 cycle. Has that expectation changed due to your M&A activity, which includes several years of amortization and added retention costs? Do you still believe in strong growth this cycle?

A: We absolutely continue to believe in a structurally healthier cycle than we have ever had. What we hoped for when we developed the PS5, and what we are actually seeing, is a series of new platform features and great games where people are spending more time on the PS5 than they did on the PS4. That uplift is definitely sustaining and turning itself into meaningful engagement and meaningful financial spend. Our acquisitions are clearly significant in terms of cashflow outlay, and while there are strategic components to the rationale, each obviously has to stand on its own feet in terms of financial return. Bungie is no exception. Each acquisition has been accretive to the financial model of PS5. I have never been more bullish about PS5, and I continue to be more bullish with each day that passes.

Q: Due to component shortage, you had to lower your console unit forecast for this year. Do you think that by next holiday season things will improve materially? Are you keeping your 23 million units expectation for FY22 or is that now a stretch?

A: Going from 11.5 million to 23 million is certainly non-trivial in terms of supply chain, but we absolutely see a path towards that number. To be honest, it's still too early to say how that number will look, but, in any scenario, unit sales will be significantly above what we are this current fiscal year.

Q: Despite the fact that you sold less consoles than expected this year, your profitability has been pretty good. You have been able to leverage the PS4 and keep selling which is encouraging.

A: Yes, profitability is at an all-time high. First, the amount of time people are spending on the PS5 is massive. Second, the level of engagement on PS4 is significant. Third, the demand for PS5 is such that we don't need to promote it at all. I don't think there is a single PS5 being promoted anywhere in the world. We are now closing on 20 million units sold and we are completely out of stock. There are big markets in Europe, the Middle East and Russia where we haven't gotten started yet, so the business is structurally strong right now. We don't expect this to change. We will see PS4 engagement waning as the years pass, but it's still an extraordinary balance.

Q: How should we think about take rates going forward? If Microsoft gets aggressive on take rates, what is the right response for Sony? What can you do to offset the hit on your profitability and to maintain current market share?

A: We will do what we are doing right now, which is to become less reliant on 3P games and 3P royalties, and to make more 1P games. If we double our share of 1P games, which are more profitable than the 3P royalty stream, it will bring down our reliance on 3P games. That is the single biggest thing, and one of the main reasons why we are embarking on M&A. I would like to point out that we are also growing our existing studios, increasing capabilities and their ability to output in various areas including live services. I feel like this part deserves a lot more attention than it currently gets. Large M&A gets all the headlines, but there is a lot going on, and growing your studios organically successfully is a smart thing to do.

Q: In 5-to-10-year time, what would be the ideal 1P operating income mix compared with your current 15%? 80% of Nintendo's profit comes from 1P, so they don't get much 3P participation as a result. On the other hand, you are able to attract all the best developers in the world due to having an open platform. What is the right balance?

A: It's not a zero-sum game. Growing the size of the overall pie is the most important point. We will do that by selling more PS5s than we ever have in the past, multiplied by making sure that the users spend more time on each of them. Having done that, we want to grow beyond 15%. Doubling market share should be possible. In a growing pie, the consequence of doubling market share is that we would overachieve our ambition of doubling our 1P business. The number of games we have slated is way beyond what we have had in the past. The competitiveness of our 1P games is increasing, Metacritic scores are going up, and the performance of each title is increasing. The part that we are missing is in live services. With live services, the historical way of measuring market share, with number of games sold, becomes difficult. We will be looking at other metrics such as revenue and engagement.

Q: If Microsoft cuts their take rate, will you have to match them immediately, or can you take your time?

A: I don't think we have to cut at all. The take rate is just one variable that a publisher uses to assess the overall attractiveness of the PlayStation platform. PlayStation has historically led the console market in terms of the number of consoles sold, which creates a large fertile ground that the publishers view as attractive. The amount of time spent is another variable. These items drive the top line of businesses, so the take rate is just one of many variables. I do not at all accept that just because someone makes a move, we would automatically need to follow.

Q: The Game Pass business model appears to have some challenges, and Microsoft appears to be losing a lot of money on it. Because the AAA publishers spend \$100 mil or more on developing titles, they are happy to sell it for \$70 on PS5.

The subscription model is more challenging for them. Given that environment, will Microsoft need to provide minimum revenue guarantees if they want those titles on Game Pass? Or do they need to go out and buy more assets like Activision to put on their platform? Are those the two options for Microsoft when trying to gain critical mass and support from the AAA publishers for Game Pass?

A: I can say with a very high degree of certainty that Microsoft has tried the first path and it did not work at all. That has driven them to make the large acquisition. I talked to all the publishers, and they unanimously do not like Game Pass because it is value destructive, not only on an individual title-basis, but also on an industry level. The recent number of subscribers that Microsoft announced on January was 25 million. I am sure everyone has their own views on this, but I personally was expecting a larger number given all the money they have spent. We have close to 50 mil PS Plus subscribers. We believe we have a meaningful subscription service.

Q: What is Sony's metaverse strategy? How big of a role will VR2 play there? Is it for gaming only, or will it be for something broader in terms of applications and markets?

A: We're approaching metaverse conversations through 2 lenses. First is as a platform holder. We had something called PlayStation Home for the PS3 and that was a very early manifestation of a platform metaverse. It was probably 10-15 years ahead of its time. The second is from the studio perspective. We have a couple of projects underway that are very exciting for us, in terms of creating some sort of game-type metaverse which can possibly have collaboration with other parts of Sony. Sony's entertainment assets have huge potential in the metaverse area. As for VR2, we see it as having a role down the road, more in the mid-term.

Q: Why isn't Roblox on the PlayStation?

A: Historically because of the large number of children that play on the PlayStation, we have been very careful with regards to opening them up to anything that

could potentially exploit them. Over the last couple of years however, we have reviewed those policies and relaxed a little on this. We have been conservative for too long, and now we are currently engaging with people at Roblox. We hope that the situation will change.

Q: Netflix upended the industry in TV and movie content. They want to give free content at no extra charge. I am curious how you think about Netflix's emerging presence in the gaming space. Is Netflix something you have to think about as a potential competitor?

A: Just given the nature of Netflix, it is important to watch them carefully. Some of what they're doing, such as leveraging their IP portfolio with game-type applications is quite smart. I contrast that with what the other huge tech companies tried to do and failed. Building a gaming platform is very difficult, but, I think in the long-term, what they're doing is interesting. We need to be careful with them. The business of making games is an extremely expensive one, and at some point, if they're serious about it, and if they aspire to accumulate critical mass, I think that they will have to change their business model. The current model will be challenging.

Xbox Game Studios - Games On PlayStation		
Studio	Title	Release Date (PS)
Double Fine	Psychonauts	June 2005
Mojang	Minecraft	Nov 2011
Compulsion	Contrast	Nov 2013
Double Fine	Broken Age: The Complete Adventure	Jan 2014
ZeniMax	Wolfenstein The New Order	May 2014
InXile	Wasteland 2	Sept 2014
Double Fine	Costume Quest 2	Oct 2014
Double Fine	Grim Fandango Remastered	Jan 2015
Obsidian	Pillars of Eternity	Mar 2015
ZeniMax	Wolfenstein The Old Blood	May 2015
ZeniMax	The Elder Scrolls Online Tamriel Unlimited	June 2015
ZeniMax	Dishonored Definitive Edition	Aug 2015
ZeniMax	Fallout 4	Nov 2015
Double Fine	Day of the Tentacle: Remastered Edition	Mar 2016
ZeniMax	Doom (2016)	May 2016
ZeniMax	Doom 1 Osiris	May 2016
Double Fine	Headlander	July 2016
ZeniMax	Skyrim SE	Oct 2016
ZeniMax	Dishonored 2	Nov 2016
Double Fine	Psychonauts in the Rhombus of Ruin	Feb 2017
InXile	Torment: Tides of Numenara	Feb 2017
Double Fine	Full Throttle Resmastered	April 2017
ZeniMax	Prey	May 2017
ZeniMax	The Elder Scrolls Online: Morrowind	June 2017
InXile	The Bard's Tale: Remastered and Resnarkled	Aug 2017
Ninja Theory	Hellblade: Senua's Sacrifice	Aug 2017
ZeniMax	Fallout 4 GOTY	Sept 2017
ZeniMax	Dishonored: Death of the Outsider	Sept 2017
ZeniMax	The Evil Within 2	Oct 2017
ZeniMax	Wolfenstein 2: The New Colossus	Oct 2017
ZeniMax	Skyrim VR	Nov 2017
ZeniMax	DOOM VFR	Dec 2017
Obsidian	Pillars of Eternity II: Deadfire	May 2018
ZeniMax	Fallout Shelter	June 2018
Compulsion	We Happy Few	Aug 2018
InXile	The Bard's Tale IV: Director's Cut	Sept 2018
ZeniMax	Fallout 76	Nov 2018
ZeniMax	Rage 2	May 2019
ZeniMax	Wolfenstein Cyberpilot VR	July 2019
ZeniMax	Wolfenstein Youngblood	July 2019
ZeniMax	Doom 3 Osiris	July 2019
Double Fine	RAD	Aug 2019

Xbox Game Studios - Games On PlayStation		
Studio	Title	Release Date (PS)
Obsidian	The Outer Worlds	Oct 2019
ZeniMax	Doom Eternal	Mar 2020
ZeniMax	Doom 64 Osiris	Mar 2020
Mojang	Minecraft Dungeons	May 2020
ZeniMax	Doom 2 Osiris	May 2020
InXile	Wasteland 3	Aug 2020
ZeniMax	Doom 3 BFG VR	Mar 2021
ZeniMax	The Elder Scrolls Online: Blackwood	June 2021
Double Fine	Psychonauts 2	Aug 2021
ZeniMax	Deathloop	Sept 2021
ZeniMax	Quake (2021)	Oct 2021
ZeniMax	Ghostwire: Tokyo	Mar 2022
ZeniMax	The Elder Scrolls Online: High Isle	June 2022
Mojang	Minecraft Legends	April 2023
ZeniMax	The Elder Scrolls Online Collection: Necrom	June 2023

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION and
ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

DECLARATION OF AMY HOOD

JUNE 26, 2023

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DECLARATION OF AMY HOOD

1. I am the Chief Financial Officer (CFO) of Microsoft Corporation. I have been in my current position as CFO since 2013. Prior to that, I was the Chief Financial Officer for the Business Division, and served as Chief of Staff in the Server & Tools Business. I joined Microsoft in 2002. Before my time at Microsoft, I worked at Goldman Sachs in the investment banking and capital markets groups.
2. I graduated from Duke University with a bachelor's degree in economics and obtained my master's degree in business administration from Harvard University.
3. In my role as CFO of Microsoft, I have a wide-ranging set of responsibilities. Among other things, I oversee the financial performance of all lines of business within Microsoft, participate in the approval process for proposed acquisitions, approve Microsoft's filings with the U.S. Securities and Exchange Commission (including quarterly financial reports, known as 10-Qs, and annual financial reports, known as 10-Ks), participate in Microsoft's quarterly earnings calls with investors, and attend meetings of Microsoft's Board of Directors and its Audit Committee.
4. As mentioned above, one of my specific responsibilities is to oversee the financial performance of Microsoft's various lines of business. Each line of business is accountable to me, and ultimately to Satya Nadella—Microsoft's Chief Executive Officer, Chairman of the Board of Directors, and Chief Operating Decision Maker—for its financial performance. At the beginning of Microsoft's fiscal year, which starts on July 1, I set annual financial goals and performance metrics for each line of business. I review these goals and metrics on a quarterly basis, sometimes more frequently.¹

¹ See, e.g., PX 4029 (Emails re: "Studios/First party review") (November 2020) at -002 (A. Hood: "I would like to do a business review of our first party studios investments – including all the acquisitions we have done in the 'surge.' . . . The high level business results point to Minecraft mainly saving a lot of other issues so want to make sure I get a sense of where each individual effort is versus expectations."), -001 (A. Hood: "I just want to see the commitments we made when we acquired all the new studios, the commitments we made on timelines for existing studios when we said we would ship a great game every quarter to the

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5. Another one of my specific responsibilities is to participate in the approval process for proposed acquisitions by Microsoft's lines of business. During my time at Microsoft, I have participated in the approval process for approximately 120 deals, including the \$26.2 billion acquisition of LinkedIn in 2016 and the \$7.5 billion acquisition of GitHub in 2018. There are different approval levels for acquisitions depending on the value of the deal. I provide final approval for proposed acquisitions under a certain dollar amount. Transactions over \$500 million require final approval by Microsoft's Board of Directors.
6. Microsoft's proposed acquisition of Activision Blizzard, Inc. (the "Acquisition"), valued at approximately \$68.7 billion, required and received final approval from Microsoft's Board of Directors. I was informed about the opportunity to possibly acquire Activision in the fall of 2021. My role in the Acquisition—along with my team—was to review and analyze the financial model, assess the valuation of Activision Blizzard, Inc. ("Activision"), evaluate the overall impact of the Acquisition on Microsoft's financials, and provide advice and counsel to Xbox and Microsoft management, as well as the Board, on the financial aspects of the Acquisition.²

Xbox is independently accountable for its financial performance.

7. Xbox, sometimes referred to as Microsoft's Gaming business, is treated as a standalone entity for purposes of financial accountability. The annual financial targets I set for Xbox include a top-line revenue target and a bottom-line "operating profit" or "accountability margin" ("AM") target. Xbox is accountable to me and to Microsoft for meeting those targets.³

Board a little over a year ago, and where we are versus those both timelines commitments (schedule) and quality commitments (revenue).").

² As part of approving the terms of the deal, which has a termination date of July 18, 2023, I also approved a \$3 billion termination fee. As a percentage of the \$68.7 billion purchase price of the Acquisition, the \$3 billion termination fee was in line with typical termination fees in the industry. *See* PX 0083 (Agreement and Plan of Merger by and among Microsoft Corporation, Anchorage Merger Sub Inc. and Activision Blizzard, Inc.) (January 18, 2022) at -091. I further discuss my specific role in the Acquisition below. *See infra* paragraphs 13–20.

³ *See, e.g.,* [REDACTED]

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8. Xbox leadership sets the business strategy for how to meet those financial targets. The two key levers are to increase revenue or cut costs. Over the years, Xbox leadership has had to execute budget cuts, lay off employees, ship fewer consoles,⁴ close studios, pause or reduce future investments for some projects, and make cutbacks in marketing in order to meet their targets.⁵
9. Xbox has historically had a lower operating margin than Microsoft's other lines of business. That is still true today. Microsoft's operating margin is approximately 40%, [REDACTED]. Over time, we are striving to increase Xbox's operating margin to bring it closer to those of Microsoft's other lines of business.
10. With approximately \$16.23 billion in revenue in fiscal year 2022, Xbox is also a relatively small line of business within Microsoft, whose annual revenue for fiscal year 2022 was approximately \$198.27 billion.

⁴ Xbox consoles are subsidized, meaning they are sold at a loss. *See, e.g.*, PX 4044 (Emails re: "Gaming in FY21") (March 2020) at -002 (A. Hood proposing options, including constraining console supply, to address issue of "how consoles do and how much we should be subsidizing them (if at all)"); PX 9009 (Transcript: Q1 2021 Microsoft Corp. Earnings Call - Final) (October 27, 2020) at -011 (A. Hood: "We expect very strong demand, following the launch of our next-generation Xbox Series X and S consoles, driving supply-constrained hardware revenue growth of approximately 40%. We also expect negative gross margin impact from console sales this quarter as we invest against the growing lifetime value of the platform."); [REDACTED]

⁵ *See, e.g.*, [REDACTED]

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To succeed financially, Xbox must make more games available on more platforms.

11. To improve its financial performance, Xbox has been seeking to move away from being tied to exclusive hardware (Xbox consoles) towards wider distribution of its software (games). *Minecraft*, a multi-platform game that Microsoft acquired in 2014, is the perfect example of this strategy. *Minecraft* is available on every console, on PCs, and on iOS and Android phones, and [REDACTED]
12. As a key component of its multi-platform strategy, Xbox and Microsoft leadership have been looking for opportunities to expand into the mobile gaming and PC gaming markets.⁶ The potential acquisition of Zynga Inc., a mobile game developer, was one such opportunity that we looked at very closely just prior to the acquisition of Activision Blizzard Inc. (“Activision”).⁷

The strategic rationale for the Acquisition was Activision’s presence across multiple platforms, particularly on mobile.

13. I and others presented on the Acquisition to Microsoft’s Board of Directors during the course of three meetings in December 2021 and

⁶ See, e.g., RX 1128 (Emails re: “MS Tech Weekly: Video Games secular concerns vs F2P; Semis bottom to bonanza? SPOT podcast strategy | Earnings NVDA CSCO ATVI INTAP; GS Tech Conference”) (February 2019) at -001 (A. Hood: “Long Term: I am concerned the issue is systemic. I worry that all the investment we are putting into launching two consoles for next gen will be into a market that is increasingly defined by mobile usage, breadth dynamics and more standard components (like so many other endpoints) – and our breadth SKU won’t be mobile enabled...”); RX 1080 (Emails re: “Take-Two Interactive acquires Playdots for \$192m | GamesIndustry.biz”) (August 2020) (providing a table of “some of the key mobile developers / publishers that we are tracking and evaluating” in response to a query from S. Nadella); RX 1133 (Emails re: “EA move”) (June 2021) at -002 (A. Hood: “[W]e should review the entire target list for mobile as we think about the public company target”); RX 1120 (Teams chat between P. Spencer, A. Hood, and S. Nadella) (November 2021) (discussing new leadership hire to drive mobile strategy).

⁷ See, e.g., RX 1119 (Emails re: “Zynga”) (June 17, 2021) at -001 (A. Hood : “I think, for me, the very different business models due to their reliance on mobile is super interesting for us.”); RX 1105 (Email re: “Zynga,” attaching “Gaming CSA – Zynga Strategy Approval – vFINAL.docx”) (June 18, 2021) (P. Spencer at -001: “I believe firmly that Zynga is the best asset to accelerate our position in mobile.”); RX 1140 (Microsoft Teams Meeting invitation re: “Project Zipline,” attaching “Gaming CSA – Zynga.pptx”) (October 2021) (discussion materials and draft board slides for the potential acquisition of Zynga).

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January 2022. We had robust discussions with the Board about both the strategic rationale for the acquisition, and the valuation of Activision—in other words, the dollar value of the acquisition to Microsoft.

14. During our first session with the Board on December 8, 2021, we briefed the Board on the gaming industry's landscape, including the fact that \$113 billion of the game industry's total revenues of \$210 billion came from mobile gaming in 2020,⁸ and that Microsoft is smaller in terms of reported revenue than Tencent, Sony, Google (Alphabet), Nintendo, and Apple.⁹ We detailed our goal of increasing Xbox revenue from mobile transactions [REDACTED] and generally expanding Xbox's presence on mobile and PC platforms.¹⁰ The Board was familiar with this general strategy, having recently been briefed on the potential acquisition of Zynga Inc.
15. We also briefed the Board on Activision Blizzard Inc.'s key assets across differentiated platforms: Activision's *Call of Duty* console and mobile franchises; Blizzard's PC games, like *Diablo* and *World of Warcraft*; and King's mobile game *Candy Crush*.¹¹ We showed the Board that Activision's PC and mobile assets in Blizzard and King generate more revenue and more than double the monthly average users than Activision's console gaming assets, illustrating how the Acquisition furthered our strategic multi-platform goals.¹² And we reported our key diligence findings, which identified five different mobile and PC gaming opportunities as the financial upsides of the Acquisition.¹³

⁸ See RX 3166 (Presentation to Board of Directors: Project Denali: Activision Blizzard) (December 8, 2021) at -003.

⁹ See *id.* at -004.

¹⁰ See *id.* at -005 to -008.

¹¹ See *id.* at -010; RX 1154 (Email Withheld for privilege // Attachment re: Activision Blizzard Final Board of Directors Presentation Deck) (January 16, 2022) at -023.

¹² See RX 3166 (Presentation to Board of Directors: Project Denali: Activision Blizzard) (December 8, 2021) at -010; RX 1154 (Email Withheld for privilege // Attachment re: Activision Blizzard Final Board of Directors Presentation Deck) (January 16, 2022) at -023.

¹³ See RX 1156 (Activision Blizzard First January Board of Directors deck) (January 14, 2022) at -004; RX 1154 (Email Withheld for privilege // Attachment re: Activision Blizzard Final Board of Directors Presentation Deck) (January 16, 2022) at -015.

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The valuation of Activision rests in significant part on continued sales of Call of Duty on the PlayStation.

16. One of my roles in the Acquisition was to review and approve the financial model that was presented to Microsoft's Board of Directors. I approved Microsoft's proposed purchase price of \$68.7 billion. As part of that approval, I reviewed pricing for prior analogous transactions within the industry,¹⁴ as well as the components of Activision's potential value to Microsoft.¹⁵
17. An essential component of that valuation was the [REDACTED] in forecasted total future sales of Activision's content on all platforms, including continued sales of *Call of Duty* on Sony's PlayStation.¹⁶
18. The possibility of making *Call of Duty* exclusive to Xbox was never assessed or discussed with me, nor was it even mentioned in any of the presentations to or discussions with the Board of Directors. I understood the necessity of keeping *Call of Duty* on other platforms. The Acquisition's strategic rationale and financial valuation are both aligned toward making Activision games more widely available, not less.
19. Another important component of the financial analysis was that the purchase had to be financially accretive to Microsoft's shareholders in year one, meaning that the acquisition must immediately contribute to an increase in earnings per share.¹⁷

¹⁴ See RX 3166 (Presentation to Board of Directors: Project Denali: Activision Blizzard) (December 8, 2021) at -027; RX 1156 (Activision Blizzard First January Board of Directors deck) (January 14, 2022) at -024.

¹⁵ See RX 3166 (Presentation to Board of Directors: Project Denali: Activision Blizzard) (December 8, 2021) at -015; RX 1156 (Activision Blizzard First January Board of Directors deck) (January 14, 2022) at -013; RX 1154 (Email Withheld for privilege // Attachment re: Activision Blizzard Final Board of Directors Presentation Deck) (January 16, 2022) at -021.

¹⁶ See RX 1154 (Email Withheld for privilege // Attachment re: Activision Blizzard Final Board of Directors Presentation Deck) (January 16, 2022) at -021; *see also id.* at -019 (stating that Xbox would "[c]ontinue developing all acquired games and franchises, and continue selling on all relevant platforms (e.g., Android, iOS, PlayStation, Steam, Switch, Windows, Xbox, etc.)"); *id.* at -020 (describing "[c]ontinued sales of Activision Blizzard's portfolio on all platforms (console, PC, mobile)" and "maintain[ing] historical trends of game units sold and MAU [monthly active users]" as a key driver for the valuation).

¹⁷ See RX 1154 (Email Withheld for privilege // Attachment re: Activision Blizzard Final Board of Directors Presentation Deck) (January 16, 2022) at -009; *see* RX 1156 (Activision

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20. Based on all of the analyses presented to the Board, the Board approved the Acquisition on January 16, 2022.¹⁸

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 26, 2023


Amy Hood
Chief Financial Officer
Microsoft Corporation

Blizzard First January Board of Directors deck) (January 14, 2022) at -014; *see also* generally RX 1079 at -001 (Email from A. Hood to P. Spencer and T. Stuart) (April 2019)

¹⁸ See PX 1102 (Emails re: “Approval: WB Game Pass Content”) (May 2021) at -002 (A. Hood: “Satya voice is very loud here—not everything works, but you can’t get the big ones wrong as that is what a) loses permissions to do your job and then you b) lose your job.”); *id.* (A. Hood: “We don’t get to do many big deals ever so the Board always asks for big things—you just gotta be right. . . . It is the phrase Satya tells the Board each time we go – we will take risks, but on the big things we just have to be right.”).